



## **Maidstone Borough Council**

### **Local Housing Allowance**

### **Safeguard Policy**

## Introduction

Local Housing Allowance (LHA) comes into effect on 7 April 2008 and will affect any tenant who makes a new application for housing benefit, is already claiming benefit and has a change of address or has a break in their existing claim. The new rules will not apply to Local Authority tenants, tenants of registered social landlords (in the main Housing Associations), tenants who have a registered or 'fair' rent, tenancies which commenced before January 1989, protected cases such as supported housing provided by social landlords, charities or voluntary organisations, who also provide care, support or supervision or tenancies in caravans, houseboats or hostels.

The national roll out of Local Housing Allowance removes the right from customers to choose to have their Housing Benefit (HB) payments sent directly to their landlord. This change in national policy is a fundamental part of the reform of Housing Benefit and will support the Department for Work and Pensions (DWP) specific aims of Personal Responsibility and Financial Inclusion.

However, the regulations allow in certain circumstances for payments to be made directly to the landlord in order to 'safeguard' the tenant and the payment of rent. Those circumstances are:

- When the tenant is likely to have difficulty managing their affairs
- When the tenant is likely not to pay their rent
- Certain other existing safeguards

The purpose of this policy is to protect our customers by making payments direct to the landlord in cases where we as a Council determine it unlikely (based on all the factors and evidence provided) that the customer will pay their rent to the landlord. It will also enable us to ensure customers who want to be classed as "likely to have difficulties managing their financial affairs" because they would prefer the ease of not having to pay the rent to their landlord are not excluded from their personal responsibility.

Successful adherence to this policy will:

- Provide protection for our most vulnerable customers by giving reassurance that their rent will be paid
- Help prevent rent arrears; the risk of eviction; and increased homelessness amongst vulnerable households
- Reassure landlords that the rent charged will be paid if they have or are approached by vulnerable customers
- Ensure customers who require support are put in touch with relevant agencies/support groups
- Promote and publicise this process to ensure confidence in the scheme

## **Circumstances where payment can be made to a landlord**

### **Section 1 - The tenant is likely to have difficulty managing their affairs**

#### **Introduction**

This provision allows for payments to be made directly to a landlord where the Local Authority considers that the tenant 'is likely to have difficulty managing his affairs'. The intention is to prevent tenants who are likely to experience difficulties from falling into rent arrears. One of the aims of the HB Reform is to encourage tenants to take responsibility for their rent payments. With this in mind we need to balance the necessity to pay the landlord directly with the requirement to promote the aims of the HB Reforms.

The phrase '*is likely*' means that there must be a degree of certainty that the tenant will be unable to manage their affairs. It is not sufficient to conclude that there is a *possibility* that the tenant may have difficulty managing his affairs or that, because tenants in certain circumstances carry a *risk* that they *may* be unable to manage their affairs, we should pay the landlord direct. Each case will be judged on its individual merits having thoroughly investigated the representations that a tenant is likely to have difficulty managing their affairs.

Similarly, we need to distinguish between tenants who choose to manage their finances in a less than organised way and those that genuinely have difficulty managing their affairs.

Tenants who are likely to have difficulty managing their affairs are deemed to be 'vulnerable' tenants. Some tenants may wish to be classed as vulnerable simply because they would prefer to have payments sent direct to their landlord. The 'vulnerability' provision cannot be used to circumvent that fact that there is no longer a provision for the tenant to request direct payments. In most cases we would be looking for evidence from professional bodies such as doctors, social workers, probation officers etc.

#### **Possible indicators that tenants may be 'vulnerable'**

Where a representation is received, but with no actual evidence of an outcome of vulnerability, we will consider an individual's current circumstances in order to determine whether they satisfy the vulnerability test.

Please also note that this is not an exhaustive list of possible indicators

#### **People with learning disabilities**

In all cases where there is representation that a tenant is suffering from learning disabilities we should seek confirmation from a Support Worker, Social Worker or a Doctor.

#### **Tenant has a medical condition**

Where the tenant has a medical condition that is likely to significantly impair a person's ability to manage on a day to day basis, such as mental health problems (Schizophrenia, depression, age-related mental deterioration such as early stages of Alzheimer's disease or senile dementia). There are also physical conditions which may make it difficult for a person to manage their affairs. In these situations we must consider how a tenant's other financial affairs are conducted, i.e. a person's care worker may collect their benefits from a post office by signing the proxy arrangements, paying their bills at the same time.

Where vulnerability is satisfied and payments are made to landlord on the grounds of a medical condition, depending on the actual condition the person's situation may be monitored at regular intervals for improvement.

## **Illiteracy**

Representations may be made by the customer or a third party. Illiteracy may be demonstrated by an inability to deal with payments that are issued. Failure to reply to correspondence and/or evidence of un-presented cheques may be an indicator of some kind of illiteracy.

## **An inability to speak English**

Representation may be made by a landlord or a support group or community group. We will consider other family members in determining whether this would make a tenant unable to manage their affairs. Language difficulties alone are unlikely to lead to a decision that a tenant is unable to manage their financial affairs. The support worker could assist the tenant to open a bank account and set in place a system for paying the rent on a regular basis.

## **Addiction to drugs, alcohol or gambling**

There must be evidence from GP, hospital, care workers, social services, probation services or support organisations.

## **Severe debt problems/ recent County Court Judgements**

We will look for evidence from help groups, creditors, courts, solicitors etc. In all instances where there is representation that a tenant is likely to have difficulty managing their affairs because they have severe debt problems, the council may require the tenant to seek further advice from the CAB as part of this process.

## **Un-discharged bankruptcy**

The court order will generally be sufficient evidence.

## **Making a Decision**

Payment of Housing Benefit will not be delayed whilst the council considers the request for direct payment. An interim decision can be made based on the information that is available at that time pending further investigation.

In some cases it will be obvious whether the person is vulnerable, in others we will need to reach a decision by carefully balancing the facts.

Tenants deemed vulnerable will be encouraged to seek support and advice from the appropriate source, to help them develop the skills to manage their affairs.

## **Appointees**

Persons who have been appointed to act on behalf of a tenant should not be considered as vulnerable. Nor can the tenant they act for, until such time as they cease to have an appointee acting for them.

## **Notification of decision**

All persons affected by the decision will be notified in writing of the decision, within 14 days.

A Landlord will only be held as a person affected where a decision has been made to stop payment direct or they have made representation to request payment direct.

Where the decision is made to pay the tenant direct the reason for this decision will be given.

## Evidence of vulnerability

<b>Reason for vulnerability</b>	<b>Suitable sources of evidence</b>
Learning disabilities	Letter from support provider Letter from doctor Letter from social worker Letter from recognised advice agency Interview with Maidstone Benefits/Housing staff
Medical conditions	Letter from GP Letter from hospital Letter from support provider Letter from social worker Letter from recognised advice agency Interview with Maidstone Benefits/Housing staff
Illiteracy	Letter from support worker Letter from social worker Letter from recognised advice agency Interview with Maidstone Benefits/Housing staff
Inability to speak English	Letter from support group Letter from community group Letter from social worker Letter from recognised advice agency Interview with Maidstone Benefits/Housing staff
Addictions to: Drugs Gambling Alcohol	Letter from GP Letter from support worker Letter from hospital Letter from care worker Letter from social services Letter from recognised advice agency Interview with Maidstone Benefits/Housing staff
Severe Debt problems Court order	Letter from solicitors Letter from help groups Letter from creditors Letter from recognised advice agency Interview with Maidstone Benefits/Housingstaff Un-discharged bankruptcy Court Order

In the absence of evidence or where the validity of evidence provided does not satisfy the decision maker that the tenant is unable to manage their affairs, interviews may be carried out in person either at the tenant's home, at MBC offices, or over the phone.

## **Section 2 – It is improbable that the tenant will pay his rent**

### **Introduction**

This provision allows for payments to be made directly to a landlord where the Local Authority considers that 'it is improbable that the claimant will pay his rent'. The intention is to protect both tenants and landlords where the tenant is likely to act irresponsibly and fall into rent arrears. One of the aims of the HB Reform is to encourage tenants to take responsibility for their rent payments. With this in mind we need to balance the need to pay the landlord directly with the need to promote the aims of the HB Reforms.

The phrase '*is improbable*' means that there must be a degree of probability that the tenant will not pay their rent. It is not sufficient to conclude that there is a *possibility* that the tenant may not pay his rent. Many tenants, regardless of their benefit status, carry a *risk* that they *may* not pay their rent. Each case needs to be thoroughly investigated on its own merits when considering representations that it is improbable that the claimant will pay his rent.

We need to distinguish between tenants who are genuinely unlikely to pay their rent and those who may claim that they are not likely to pay their rent because they would prefer not to take responsibility.

Maidstone Benefits service assume that unless evidence to suggest otherwise is received, all tenants receiving the Local Housing Allowance will pay their rent and consequently HB payments will usually be made to the tenant.

At the point of making the decision consideration will be given to any evidence which suggests that the tenant meets the statutory criteria for making payments direct to the landlord.

### **Possible Indicators that a tenant is unlikely to pay their rent**

It is likely that where a representation is received, but with no actual evidence that a person is unlikely to pay their rent, possibly due to the fact that until now the claimant's landlord has been in receipt of direct payments, we will make payment to the tenant.

The actions taken by the tenant once this payment has been received may be treated as further evidence to determine whether a tenant is likely to pay his rent.

The credit history where known will be taken as an indicator. Arrears of utility charges, letters from the tenant's bank, evidence of unpaid standing orders / direct debits could all indicate that the tenant does not manage his money sufficiently well and is unlikely to do so in the future.

A history of rent arrears will be regarded as more substantial evidence as this indicates that the tenant may not place great importance on paying their rent. The consideration that we are required to make is whether "a person is unlikely to pay their rent" not whether a person has a history of failing to make other payments or has experienced debt problems.

Where a person has always paid their rent but has other financial problems, payment will normally be made to the tenant as the evidence would suggest that he/she will continue to pay their rent.

### **Making a decision**

Where a representation is made that a tenant is unlikely to pay his rent, Maidstone Borough Council will make a decision based on the information and evidence available at the time.

Where there is insufficient evidence the payment will be made to the tenant.

## **Notification of decision**

All persons affected by the decision will be notified in writing of the decision, within 14 days.

A Landlord will only be held as a person affected where a decision has been made to stop payment direct or they have made representation to request payment direct.

Where the decision is made to pay the tenant direct the reason for this decision will be given.

## **Section 3 Eight-week arrears cases**

Housing Benefit (General) Regulation 95 (1) states that Payment is to be made to the landlord where a person is in arrears of 8 weeks or more of the amount he is liable to pay his landlord as rent, except where it is in the overriding interests of the claimant not to make payment to the landlord.

This is a mandatory provision for direct payment and unless it is in the overriding interest of the tenant not to do so. There is no other discretion in this matter.

The landlord must provide a statement that shows the rent that is due, payments which have been made and the amount of rent outstanding.

In the absence of clear evidence of arrears payment will be made direct to the tenant.

## **Section 4 – Special circumstances**

Where it appears to the Local Authority that circumstances may have been contrived in order to secure direct payment of Local Housing Allowance to the landlord the normal provisions as outlined in this policy may be varied.

Any evidence of a landlord colluding to create or report a false impression for the purpose of receiving payment direct, will be reviewed in order to determine the suitability of the landlord to receive payment direct. This may result in a decision that the landlord is not a fit and proper person to receive any future payments direct.

## **Section 5 – Appeals and Disputes**

All persons affected by the decision will be notified in writing of the decision, within 14 days. See "Notification of Decision" above.

Where there is disagreement or dispute regarding the decision to make payment direct the persons affected may ask for a statement of reasons for the decision or that the decision be reviewed.

All such requests must be made in writing within one month of the date of decision.

Where a decision is reviewed and agreement still cannot be reached, details of the decision will be passed to the Appeals Service to be considered as a formal Appeal. All persons affected will be invited to participate in the appeals process.

**Landlord Request for Local Housing Allowance to be paid direct**

**Reason For Request**

- The tenant is 8 weeks or more in arrears with the rent
- The tenant is unlikely to pay the rent
- The tenant is likely to have difficulty paying the rent

**Tenants details**

<b>Name</b>	
<b>Address</b>	
<b>Telephone Number</b>	
<b>Housing Benefit reference</b>	

**Landlords details**

<b>Name</b>	
<b>Address</b>	
<b>Telephone Number</b>	

**We will need evidence that the tenant is in rent arrears this could be a statement that shows the rent that is due and the rent that has been paid during the last 12 months or since the tenancy started:**

**The statement must include:**

- Tenancy start date
- Rent charged
- Frequency that payments are due
- Current rent arrears outstanding
- Dates and amounts of all payments received in the last 12 months
- The statement must be signed and dated

Please explain below (or on a separate sheet) why you consider that Local Housing Allowance payments should be made to the landlord.

Signed

Dated

Please provide any evidence that supports your request, If you cannot provide evidence there may be a delay before a decision is made.

(tick all evidence supplied)

- Rent statement
- Tenants statement
- Letter from support worker
- Letter from GP / Hospital
- Letter from solicitor / CAB
- Other .....(please specify)
- Other .....(please specify)
- Other .....(please specify)

**Third Party Request for Local Housing Allowance to be paid to landlord or a third party**

**Reason For Request**

The tenant is unlikely to pay the rent

The tenant is likely to have difficulty paying the rent

**Tenants details**

<b>Name</b>	
<b>Address</b>	
<b>Telephone Number</b>	
<b>Housing Benefit Reference</b>	

**Your Details**

<b>Name</b>		
<b>Organisation (If applicable)</b>		
<b>Address</b>		
<b>Relationship to tenant</b>		
<b>Telephone Number</b>		
<b>Signed</b>		<b>Dated</b>

**Who should receive payments**

<b>Name</b>	
<b>Address</b>	
<b>Relationship to tenant</b>	

Telephone Number

Please explain below (or on a separate sheet) why you consider that Local Housing Allowance payments should be made to the landlord, appointee or third party

Please provide any evidence that supports your request, If you cannot provide evidence there may be a delay before a decision is made.

(please tick all evidence supplied)

- Rent statement
- Tenants statement
- Letter from support worker
- Letter from GP / Hospital
- Letter from solicitor / CAB
- Other .....(please specify)
- Other .....(please specify)
- Other .....(please specify)